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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,780	11/14/2005	Matti Salmenkaita	59643.00625	6472
32294 7590 08/11/2008 SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER				
CASCA, FRED A				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
08/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/539,780

**Applicant(s)**

SALMENKAITA ET AL.

**Examiner**

FRED A. CASCA

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-28 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to applicant's amendment filed on July 15, 2008. Claims 1-28 are still pending in the present application.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. However, claims 1-28 are rejected in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-7 are drawn to a "method" *per se*, as recited in the preamble, are not tied to another statutory class (such as a particular apparatus) and as such are non-statutory subject matter. See MPEP § 2106.IV.B.

Based on Supreme Court precedent and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to a non-statutory subject matter.

An example of a method claim that would not qualify as statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claims 1-7 comprise elements that show how a process is performed, but they do not show what physical element performs the process. Thus, claims 1-7 are not tied to another statutory class (such as a particular apparatus).

5. Claims 21-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 21-26 are drawn to a “computer program” as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit

the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

The following are example of acceptable language in computer-processing related claims:

1. "computer readable medium" encoded with \_\_\_\_\_
  - a. " a computer program"
  - b. "software"
  - c. "computer executable instructions"
  - d. "instructions capable of being executed by a computer"
2. "a computer readable medium" \_\_\_\_\_ "computer program"
  - a. "storing a"
  - b. "embodied with a"
  - c. "encoded with a"
  - d. "having a stored"
  - e. "having an encoded"

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, and 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al (US 7,197,303 B2) over Fisher et al (US 5,528,596).

Referring to claim 1, Sakai discloses a method (abstract and col. 1, lines 30-67) comprising:

establishing a radio channel candidate (figure 1-3, col. 4, lines 5-10, note that establishing a radio channel candidate is inherent in TDMA and other cellular communication systems);

processing the radio channel candidate with potentially interfering signals (figures 2-4, and col. 2, lines 2-40, "carrier-to-interference ratios are measured", "(CIRs) are detected in the order of the priority. When a detected CIR is firstly satisfied with a predetermined CIR condition, the communication channel corresponding to the detected CIR is allocated to the mobile station") and calculating a carrier to interference ratio (CIR) for the selected carrier frequency of the radio channel candidate and the potentially interfering signals (figures 2-4, and col. 2, lines 2-40, "calculating a carrier to interference ratio (CIR)");

Sakai further discloses using a criteria based on the interference ratio and the carrier to interference ratio in a selection process for selecting a channel for the connection to be established (figures 2-6, and col. 2, lines 2-40, "calculating a carrier to interference ratio (CIR)).

Sakai does not specifically disclose calculating at least one dominant interference ratio being the ratio of a signal level of a strongest potentially interfering signal with respect to a sum of signal levels of other potentially interfering signals and calculating based on dominant interference ration.

Molnar discloses the concept of determining a dominant noise to signal ratio which is inherently the ratio of a signal level of a strongest potentially interfering signal with respect to a sum of signal level of other interfering signals (col. 3, line 55 – col. 4, line 5, particularly col. 4, lines 1-2, "dominant noise to signal ratio").

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the method of Sakai in the format claimed by applicant, for the purpose of providing a channel with lesser interference and thus providing an efficient communication channel.

Referring to claim 3, the combinations of Sakai/Fisher disclose the method of claim 2, and further disclose the dominant interference ratio is used to establish an indication as to the gain provided by the interference cancellation technique in the format claimed by applicant (Fisher, col. 3, line 55 – col. 4, line 5).

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the method of Sakai in the format claimed by applicant, for the purpose of providing a channel with lesser interference and thus providing an efficient communication channel.

Referring to claim 5, the combinations of Sakai/Fisher disclose the method of claim 1.

The combination does not disclose one of the criteria used in the selection process is the maximum value of the minimum difference between the calculated carrier to interference ratio and a target carrier to interference ratio.

It would have been an obvious design choice to modify the combination by allowing one of the criteria used in the selection process to be the maximum value of the minimum difference between the calculated carrier to interference ratio and a target carrier to interference ratio, since applicant has not disclosed that such limitation solves any stated problems or is for any particular purpose and it appears the method would perform equally well without having the additional limitation claimed by applicant.

Referring to claim 6, the combinations of Sakai/Fisher disclose the method of claim 1.

The combination does not disclose one of the criteria used in the selection process is the average dominant interference ratio taken over a set of  $n$  connections which could be interfered with by the connection to be established.

It would have been an obvious design choice to allow one of the criteria used in the selection process to be the average dominant interference ratio taken over a set of  $n$  connections which could be interfered with by the connection to be established, since applicant has not disclosed that such limitation solves any stated problems or is for any particular purpose and it appears the method would perform equally well without having the additional limitation claimed by applicant.



Referring to claim 7, the combinations of Sakai/Fisher disclose the method of claim 3, and further disclose the interference cancellation gain provided by the interference cancellation function technique is established from the dominant interference ratio using a predefined function (Sakai, col. 6, lines 40-51, col. 9, lines 41-56, and col. 14, lines 4-10, “in a S-CDMA system, in-cell interference is mitigated by the orthogonal nature of the S-CDMA, implying that the dominant interference results from adjacent cells”).

Referring to claim 8-10, claims 8-10 define a system for channel allocation reciting features analogous to the features of the channel allocation method of claims 1-3 (as rejected above). Thus, the combinations of Sakai/Fisher disclose all elements of claims 8-10 (please see the rejection of claims 1-3 above).

Referring to claim 11, the combinations of Sakai/Fisher disclose a base station controller in a cellular communication network which includes a system according to claim 8 (Sakai, col. 3, lines 28-35, col. 4, lines 50-67 and figure 1, “TDMA”).

Referring to claim 12, claim 12 recite features analogous to the features of claim 1 (as rejected above, thus the combination of Sakai/Fisher disclose all elements of claim 12 (Please see the rejection of claim 1 above).

Referring to claim 13, the combination of Sakai/Fisher disclose a system according to claim 12 and further disclose a cellular communication system (Sakai, col. 1, lines 22-40).

Referring to claim 14, the combinations of Sakai/Fisher disclose the method of claim 1, and further disclose using criteria based on the dominant interference ratio additionally uses carrier to frequency ratio (Sakai, figures 2-6, and col. 2, lines 2-40, “calculating a carrier to interference ratio (CIR)).

Referring to claim 2, the combinations of Sakai/Fisher disclose the method of claim 14, and further disclose the step of processing interference cancellation (col. 4, lines 5-24).

8. Claims 15-28 are rejected for the same reasons and arguments that were used in the rejection of claims 1-3- and 5-14.

***Allowable Subject Matter***

9. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-3 and 5-28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred A. Casca whose telephone number is (571) 272-7918. The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Harper, can be reached at (571) 272-7605. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/VINCENT P. HARPER/  
Supervisory Patent Examiner, Art Unit 2617